

**FILED**

**MAY 19 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

MICHAEL D. ISHAM,

Plaintiff - Appellant,

v.

BENNIE MCGUINESS,

Defendant - Appellee.

No. 05-15430

D.C. No. CV-05-00016-PMP

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Nevada  
Philip M. Pro, District Judge, Presiding

Submitted May 15, 2006<sup>\*\*</sup>

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

Michael D. Isham, a Nevada state prisoner, appeals pro se from the district court's order dismissing his 42 U.S.C. § 1983 action alleging constitutional violations stemming from the miscalculation of his sentence. We have jurisdiction

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

under 28 U.S.C. § 1291. We review de novo the district court's dismissal for failure to state a claim under 28 U.S.C. § 1915A, *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and we affirm.

The district court properly dismissed Isham's action under *Heck v. Humphrey*, 512 U.S. 477, 487 (1994), as it directly challenges the validity of his continued confinement.

The district court did not abuse its discretion by dismissing Isham's action without leave to amend, because the deficiencies in the complaint could not be cured. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc).

**AFFIRMED.**